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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,426	06/15/2001	Hugh Boyd Morrison	RCA 89186	1414

7590 01/08/2007
Joseph S Tripoli
Thomson multimedia Licensing Inc
PO Box 5312
Princeton, NJ 08540

EXAMINER

SALTARELLI, DOMINIC D

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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01/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/868,426

Applicant(s)

MORRISON ET AL.

Examiner

Dominic D. Saltarelli

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 10-29


Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) _____
13. ☐ Other: _____


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the claimed limitation of "processing said electronic mail message to determine whether said electronic mail message includes said second type of program identification information if said electronic mail message does not includes said first type of program identification information." is not met by the Westlake reference, stating that the reference only teaches searching for a first type of information (applicant's remarks, page 9-10).

In response, the examiner first must note that any reference which anticipates the claimed limitation relating to the "first type of program information", which applicant asserts is the case with Westlake, would anticipate the claimed invention. On page 10 of applicant's remarks, applicant states "In other words, Westlake would never perform a step of "processing said electronic mail message to determine whether said electronic mail message includes said second type of program identification information if said electronic mail message does not include said first type of program identification information" because there would never be a situation where the electronic message of Westlake "does not includes said first type of program identification information" (i.e., a given text term in the electronic message of FIG. 4), as claimed." However, were this the case, the claim would still be anticipated by the reference, because the second processing step is entirely conditional upon the result of the first processing step, and if there is a first type of program identification information in every message, then the second processing step would never be performed by the claimed invention, and thus the reference anticipates the claim.

Further, the "types" of program identification information found in the electronic messages taught by Westlake is not merely text in the generic sense, as the text under consideration in Westlake can literally refer to anything. The program identification information being searched for within the message consists of the categories of program identification information found in the EPG to which the text found in the electronic message is being compared. As shown on page 23, lines 14-28 of Westlake, these types of program identification information that are being checked for (by comparing terms with EPG information) include many types, such as program start time, end time, duration, channel, and characteristic information like program title, theme, category, program keywords, description, program type, and repeat frequency. As such, Westlake not only teaches searching for first and second types of program characteristic information, but also third, fourth, fifth, and so on until all matches are found..